

1982 S.C. Op. Atty. Gen. 7 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-4, 1982 WL 154974

Office of the Attorney General

State of South Carolina

Opinion No. 82-4

February 4, 1982

*1 The Honorable J. Verne Smith
Member
South Carolina Senate
612 Gressette Building
Columbia, South Carolina 29202

Dear Senator Smith:

Your letter of January 28, 1982, requests clarification of the disposition of confiscated drug monies, and you have specifically called my attention to Sections 44-53-520(4)(b)(d), 44-53-580, amended, and 44-53-520(5), Code of Laws, 1976.

The foregoing statutes are portions of the Controlled Substances Act of this State. Each of the provisions has been incorporated in the law, without substantial change, since the original enactment of the statute in 1971, except the last, which was adopted in 1980.

These first two statutes present apparent conflicting terms, and in such instances, an effort must be made to give meaning to both statutes so that, read as a whole and together, the intent of the Legislature is hereby obtained. If the conflicting provisions cannot be reconciled, then, in my opinion, the governing statute would be Section 44-53-520, which is the latter provision of the two conflicting provisions and would be controlling.

I believe, however, that meaning can be given to each of the first two statutes identified by you. The first statute provides for custody of seized property to be held, subject only to the orders of the Court having jurisdiction over the forfeiture proceedings. When property is ordered forfeited, the law provides that the Commission on Alcohol and Drug Abuse may retain it, sell it, or forward it to the Bureau of Narcotics and Dangerous Drugs for disposition. The second of the two statutes (Section 44-53-580) provides that all fines and forfeitures collected by a court or agency for violation of the drug law shall be remitted to the State Treasurer to be by him transmitted to the Department of Mental Health, and by it used exclusively for the treatment of drug addicts. This statute relates only to monies and conflicts, to some extent, with the previous statute which provides that the proceeds of sales be used to pay the expenses of the sale, seizure, custodial costs and court costs.

In my opinion, the latter section providing that all fines and forfeiture monies be used by the Mental Health Commission for drug addiction treatment, is controlling and overrides the previous statute referred to, which allows such proceeds to be used for other purposes. Neither the Department of Mental Health nor the Commission on Alcohol and Drug Abuse has forfeiture authority conferred upon it. This must be accomplished through a court and the proceeds of sales of forfeited property or confiscated monies are to be transmitted in accordance with the provisions of Section 44-53-580 to be used by the Department of Mental Health.

An exception to this exists with respect to motor vehicles and water and aircraft, which are treated separately in the original statute and in an amendment adopted in 1980. You have not inquired with specific reference to this statute, but in view of the fact that the major portion of confiscated revenues are derived from boats, aircraft or motor vehicles, I am calling it to your attention in the hope that it will be of interest and assistance to you and your Committee.

*2 As to motor vehicles, upon forfeiture, the conveyance is declared to be forfeited to the State and title to it shall be transferred to the agency designated by the Attorney General or the Circuit Solicitor. If sold, the proceeds of the sale are divided equally between the State and the unit of government making the seizure.

If the seized property is a water vessel or an aircraft, title may be placed in the law enforcement agency making the seizure or to the South Carolina Aeronautics Commission in the case of aircraft; in the case of water vessels, to the Wildlife and Marine Resources Department. If it is sold subsequently, the proceeds from the sale are remitted to the State Treasurer to be placed in the General Fund.

These two provisions are for disposition of monies realized from the sale of confiscated property and override the provisions of Section 44–53–580 because they are latter in time and deal specifically with a contrary procedure for disposition of the monies.

The amendment to Section 44–53–520, which was adopted in 1980, provides basically that all monies used to purchase drugs during a criminal investigation and all monies seized at the time of arrest are subject to forfeiture. Provision is also made in the amendment for the return of monies seized if the individual from whom they were taken can establish to the satisfaction of a judge that the monies taken were not the products of illegal acts. This amendment merely provides that ‘buy money’ and monies taken in a drug raid are subject to forfeiture. If it can be demonstrated to the satisfaction of a judge that the monies were not obtained illegally, those monies can be returned to the person from whom they were taken. Any residue remaining is then disposed of after forfeiture proceedings have taken place, and the procedure outlined herein is the procedure which I think should be followed.

In summary, I advise:

- a. Monies realized from the sale of confiscated property seized under the provisions of the Controlled Substances Act, except with respect to motor vehicles, aircrafts and water-borne vessels, must be transmitted to the State Treasurer for remittance to the Department of Mental Health for use in the treatment of drug addicts as required by Section 44–53–580.
- b. Monies which are seized at the time of arrest from an individual may be restored to that individual upon proof that those monies were not illegally obtained; any residue remaining is then disposed of as forfeited property.
- c. Use of monies derived from the sale of forfeited property cannot be used for any purpose except transmission to the State Treasurer in accordance with the cited statute.

Very truly yours,

Daniel R. McLeod
Attorney General

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